

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9914 of 1995

with

SPECIAL CIVIL APPLICATION NO.9917 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARDAS NARANBHAI VASRA AND
DILIP ARJAN BHATU

Versus

STATE OF GUJARAT

Appearance:

Mr. R.S.Sanjanwala, Advocate for the Petitioners.
Mr. U.R.Bhatt, AGP for Respondents Nos. 1 and 2.
Mr Sunil C.Patel, Advocate for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 27/06/96

ORAL JUDGEMENT

The petitioners in both these petitions have challenged the orders, both dated 25-2-1994, passed under sub-section (1) of section 3 of the Conservation of

Foreign Exchange and Prevention of Smuggling Activities Act, 1974, passed by the Additional Chief Secretary to the Government of Gujarat, Home Department-respondent No.2, detaining Laxman Hardas Vasra, son of petitioner in Special Civil Application No. 9914 of 1995 and Markhi Punja Gar, brother of petitioner in Special Civil Application No. 9917 of 1995. Since both the detenus are detained by orders dated 25th February 1994 and the allegations levelled against them are the same with respect to the common incident, both the petitions are disposed of by this common judgment.

in the grounds of detention supplied to the detenus, it is alleged that on the night of 6-2-1993, the police officers of Porbandar intercepted some trucks near Gosabare bridge and on being challenged by the police officers, firing was resorted to by the persons of the truck and counter firing was also made by the police and in the confusion two trucks managed to escape. The police, however, were successful in intercepting truck No. GTK-2249 and the aforesaid two detenus of these petitions were apprehended on the spot and others ran away. An alert was sounded by the police which resulted in the interception of one truck bearing registration No.MWT-8249 by the Kutiyana police on the Rajkot-Junagadh road with three persons viz Daud Sidik Shaikh, Ibrahim Jabbarkhan and Abdul Rashid Valimohmed Ansari. Detailed search of the truck resulted in the recovery of 71 silver slabs weighing 2492.475 kgs valued at Rs.1,67,62,872/-.

During the course of interrogation of Daud Sidik Shaikh, Ibrahim Jabbarkhan and Daud Rashid Valimohmad by the police, they admitted that the contraband goods under seizure i.e. silver slabs were transported by them in truck No.MWT-8249 and they also disclosed that the said goods were shifted from truck No.GTK-2249. They also disclosed that some of the contraband goods were shifted in truck No.MH-04-P-135. On the basis of the said information, the said truck was also intercepted at Borsad on 7-2-93 alongwith two persons namely Amirali Sadruddin Bardai and Ali Asgar Saifuddin Indorwala. On making search of the said truck, there was recovery of 70 silver slabs weighing 2472.009 kgs valued at Rs.1,66,11,900/-. Thus, in all 141 silver slabs totally weighing 4964.484 kgs and valued at Rs.3,33,74,772/recovered by the police authority were handed over to the Customs Authority which were subsequently seized by the Customs Authority under the Customs Act, 1962, under proper panchnama.

After considering the statements of the detenus

and the statements of the co-accused viz Daud Sidik Shaikh, Ibrahim Jabbarkhan and Abdul Rashid Valimohmad, the detaining authority was of the view that the contraband goods under seizure were transported and shifted into other trucks from truck No.GTK-2249, which were in possession of the detenus. The detaining authority has also relied on the material that the detenus were in possession of truck No.GTK-2249 when it was apprehended by the police on the spot. Considering these materials, the detaining authority was of the view that the detenus were engaged in transporting smuggled goods and, therefore, with a view to preventing them from engaging in transporting smuggled goods, it is necessary to pass the orders of detention. The petitioners have challenged these orders of detention by way of the present petitions.

Mr. R.S.Sanjanwala, learned Advocate appearing for the petitioners, has challenged the orders of detention by contending that the detaining authority has not considered as to the need of resorting to the drastic preventive measure of detention before resorting to the punitive measure. It is the submission of Mr.Sanjanwala that the detaining authority ought not to have passed the orders of detention, which are preventive in nature, without resorting to the punitive measures. The impugned orders are also attacked on the ground of non-application of mind on the part of the detaining authority as the detaining authority has not at all considered the vital aspect that the detenus were never arrested under section 104 of the Customs Act and they were arrested by the police for the offences under the Indian Penal Code.

Having gone through the papers produced in this case, it is clear that both the detenus were arrested by Madhavpura Police Station, Porbandar, in connection with C.R.No. 4/93 for offences punishable under sections 307, 147, 148, 149, 353 and 504 of the Indian Penal Code and section 25 (1) of the Indian Arms Act and section 135 of the Bombay Police Act. It appears that an application was filed by the Customs Department to take possession of the detenus from the judicial custody. The learned JMFC, Porbandar on 16.2.93 rejected the said application by holding that the accused have been arrested under section 307 of the Indian Penal Code and for this only the accused are in the judicial custody/jail. The Customs Authorities have powers to arrest the accused under section 104 of the Customs Act, even though, no report of the arrest of the accused under section 104 has been produced before the Court in the customs case or any application is made by the Customs Authorities before the

Court showing the formal arrest of the accused . So the accused have not been shown as arrested in the customs case. In such circumstances, the custody of the accused cannot be given to the customs authorities. Reading the said order, it is clear that the accused were never arrested in connection with the alleged offence under the Customs Act even when the accused were released on bail subsequently by the learned Magistrate. Thus, in absence of any offence having been registered against the detenus under the Customs Act till date, and especially when the detaining authority has considered the material with respect to the offences registered against the detenus under the Indian Penal Code, coupled with the fact of the application of bail moved by the detenus for their alleged involvement in the said offences, I am of the opinion that the subjective satisfaction arrived at by the detaining authority to the effect that the detenus are likely to engage themselves in transporting smuggled goods, is not genuine. Thus, it is a clear case of non-application of mind on the part of the detaining authority, inasmuch as it was not at all aware of the fact that the detenus were never arrested under section 104 of the Customs Act for the alleged offence of smuggling of goods punishable under section 135 of the Customs Act. When there is no offence registered under the Customs Act against the detenus, the preventive measure resorted to by the detaining authority, without exhausting the punitive measure , is also not justified. In view of the above discussion, these petitions are allowed only on the first contention raised on behalf of the petitioners.

In the result, these petitions are allowed. The impugned orders , both dated 25-2-1994, are quashed and set aside. Detenu Lakhman Hardas Vasra of Special Civil Application No.9914/95 and Detenu Markhi Punja Gar of Special Civil Application No.9917/95 are directed to be set at liberty forthwith if their detention is not required for any other purpose. Rule in each of these petitions is made absolute accordingly with no order as to costs.

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